

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: NATIONAL COLLEGIATE ) Docket No. 13 C 9116  
ATHLETIC ASSOCIATION STUDENT- )  
ATHLETE CONCUSSION INJURY ) Chicago, Illinois  
LITIGATION, ) March 3, 2017  
 ) 10:15 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiffs: HAGENS BERMAN SOBOL SHAPIRO, by  
MS. ELIZABETH A. FEGAN  
(appearing telephonically)  
MR. DANIEL J. KUROWSKI  
455 North Cityfront Plaza Drive  
NBC Tower - Suite 2410  
Chicago, Illinois 60611

For Defendant NCAA: LATHAM & WATKINS, by  
MS. JOHANNA MARGARET SPELLMAN  
330 North Wabash Avenue  
Suite 2800  
Chicago, Illinois 60611

ALEXANDRA ROTH, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street, Room 1224  
Chicago, Illinois 60604  
(312) 408-5038

1 (Proceedings had in open court:)

2 THE CLERK: 13 C 9116, NCAA Student Athlete Concussion  
3 Injury Litigation.

4 MS. SPELLMAN: Good morning, your Honor. Johanna  
5 Spellman for the defendant.

6 MR. KUROWSKI: Good morning, your Honor. Daniel  
7 Kurowski for plaintiffs.

8 MS. FEGAN: Good morning, your Honor. Elizabeth Fegan  
9 on the telephone for plaintiffs also.

10 THE COURT: Ms. Fegan, you are not joining us this  
11 morning.

12 MS. FEGAN: I know. I apologize. I was supposed to  
13 be home Wednesday night, and I'm still on the road. My  
14 apologies.

15 THE COURT: No, that's fine.

16 So how are things going, Ms. Spellman?

17 MS. SPELLMAN: Things are going well, your Honor. The  
18 parties will be filing today a detailed declaration from  
19 Gilardi that sets forth with greater specificity and hopefully  
20 greater clarity for the Court the specific costs that have been  
21 incurred in performing the notice program to date and projected  
22 costs. Your Honor had asked specifically for more detail in  
23 the administrative costs and costs that have not been  
24 anticipated back in April 2015, when Gilardi filed a  
25 declaration on the projected cost of the notice program. That

1 information will be in the declaration.

2           To preview for you, the upshot is, there are about  
3 \$250,000 in costs incurred and projected that were not  
4 addressed in the April 2015 declaration. Those consist  
5 primarily of Gilardi's project management costs, costs of  
6 communicating with the parties about the notice program, costs  
7 of communicating with the parties about the collection of  
8 substantial student athlete contact information from member  
9 schools, quality control costs, day-to-day maintenance costs,  
10 those kinds of things, as well as costs of advising on the  
11 phase one media campaign. Gilardi's costs of performing that  
12 campaign were not addressed in the declaration. And then costs  
13 of setting up a toll-free hotline that settlement class members  
14 are able to call with questions about the settlement. So those  
15 costs -- those are the bigger buckets that go into those costs.

16           As you will see when we make our submission, the  
17 primary driver of an increase in cost of the notice program  
18 relates to the amount of direct notice that the notice  
19 administrator is able to provide. In January the notice  
20 administrator sent about 2.1 million postcard notices to class  
21 members and projects that when the second round of direct  
22 notice goes out a total of approximately 3.6 million class  
23 members will be sent postcard notice.

24           That's substantially more than the 2.9 million that  
25 was projected back in April of 2015, which is a good thing.

1 It's to the benefit of the class. We -- Gilardi has received  
2 substantially more useful contact information from member  
3 schools. But the increased volume in contact information, as  
4 well as the fact that printing costs and postage costs have  
5 increased since April 2015, has led to an increase of  
6 approximately \$450,000 in the cost of sending direct notice.

7 All that should be hopefully laid out clearly for your  
8 Honor. But that's --

9 THE COURT: So what do you anticipate that the net  
10 increase will be as compared to the original overall budget  
11 that the parties presented back at the date of preliminary  
12 approval?

13 MS. SPELLMAN: The net increase will be  
14 approximately -- I think it's approximately 600,000.

15 THE COURT: And that's for --

16 MS. SPELLMAN: Maybe little bit more.

17 THE COURT: That includes anticipated costs too,  
18 right?

19 MS. SPELLMAN: That's right. That's through the  
20 completion of the notice program.

21 THE COURT: Okay. And that still places us well  
22 within the bounds of Dr. Deal's cost estimates and forecast  
23 with regard to the sufficiency of the \$70 million fund?

24 MS. SPELLMAN: I believe so. I have to defer to  
25 plaintiff's counsel on that, though.

1 MS. FEGAN: It does, your Honor.

2 THE COURT: Okay. All right. So when everything is  
3 filed today, I will take a look at it. I take it that you are  
4 also providing me with a just analysis, comparing the original  
5 budget with the additional costs that were incurred and the  
6 projected cost, just give me some sort of comparison?

7 MS. SPELLMAN: We do, your Honor. The submission does  
8 compare the original estimated cost to the projected total  
9 cost. And I think the projected -- current projected total  
10 cost is approximately 3.1 percent of the total fund, which is  
11 still well within the range and well under what other courts  
12 have found to be acceptable and reasonable.

13 THE COURT: Okay.

14 MS. SPELLMAN: That will be in there.

15 THE COURT: And how is the direct notice program  
16 going? I know that the NCAA was assisting the plaintiffs in  
17 getting additional responses from various member institutions.  
18 How is that going?

19 MS. SPELLMAN: It's going well, your Honor. The NCAA  
20 did send out a third and final request for contact information  
21 in December, with a short window for schools to voluntarily  
22 comply. And then subsequent to that, class counsel served  
23 approximately 385 subpoenas on schools. The response to those  
24 has been good. But there still remain about 80 schools that  
25 have not provided any contact information.

1           We -- we think respectfully it would be in the class'  
2 benefit to reach out to those schools and really try to impress  
3 upon them the importance of complying with the subpoenas and  
4 doing it timely, giving them a short window of a few weeks, to  
5 make, you know, a final push to try to get as much contact  
6 information as we can, so as much direct notice can be sent as  
7 possible. That would require a modest extension of the  
8 schedule. But we think it's worth -- an effort worth making.

9           THE COURT: Of the 85 schools, what percentage of the  
10 overall NCAA members does the 85 consist of?

11           MS. SPELLMAN: I believe -- I believe there are  
12 approximately 1100 schools. So that's -- that's a rough  
13 ballpark.

14           THE COURT: So that will be about what, eight percent?

15           MS. SPELLMAN: Approximately.

16           THE COURT: Okay. And so you anticipate that to allow  
17 this process to happen -- I am just trying to figure out  
18 whether or not at this point the parties anticipate that the  
19 May 4 -- is it May 4 or May 5, the final approval date --

20           MS. SPELLMAN: I believe it's May 5.

21           THE COURT: May 5, whether the final approval date  
22 is -- are we still on schedule to meet that?

23           MS. SPELLMAN: I think it would require a modest  
24 extension of that schedule, maybe approximately 30 days or so.

25           THE COURT: Okay. Ms. Fegan, what do you think?

1 MS. FEGAN: Your Honor, while we think that having 92  
2 percent of the schools responding and the contact information,  
3 we do not object if the NCAA wants to make one more push to try  
4 and get all the schools data in. Ms. Spellman and I did speak  
5 yesterday, confer about a proposed extension of the schedule.  
6 And I do think if we are going to enter that, it needs to be  
7 before next Friday, which is the objection date.

8 The second round of notice still needs to go out.  
9 Even if the 80 schools don't respond, the second round of  
10 notice still needs to go out. And that objection date can't  
11 occur before all of the direct notice is complete.

12 THE COURT: Right. And so how much time do you think  
13 the modest extension would consist of? Have the parties  
14 thought about that?

15 MS. SPELLMAN: We have, your Honor. We had proposed,  
16 in conferring with Ms. Fegan yesterday, asking schools to  
17 provide their data no later than March 24. The second round of  
18 direct notice would go out April 14. The opt-out and objection  
19 deadline would be May 5. Final approval motion would be filed  
20 on May 26, and then a fairness hearing on June 9.

21 THE COURT: June 9 is going to be difficult for me.  
22 But I take it the motion will ask for some sort of date after  
23 June 9?

24 MS. SPELLMAN: Sure. That was just our suggestion,  
25 ballpark suggestion.

1           THE COURT: And, Ms. Fegan, in cases like this where  
2 we have such a broad class, what would be the best way -- well,  
3 let me put it this way: By simply granting the request and  
4 putting it on the court's website, would that be sufficient to  
5 notify the class of the change in the date, the deadlines? Or  
6 will some additional outreach be required so that the class  
7 members know about the change in the schedule?

8           MS. FEGAN: Your Honor, typically -- and the  
9 preliminary approval order allows the Court to change the dates  
10 obviously. And typically we do post that on the settlement  
11 website. We can inquire with Gilardi whether an e-mail blast  
12 could go out to let those that have provided e-mail addresses  
13 or for which we have them -- notice of the new date. I don't  
14 know how much that would cost. But we can find that out today  
15 and perhaps include that in today's submission.

16           But typically having it on the settlement website and  
17 obviously having it on the court's docket is sufficient.

18           THE COURT: Right. I think it seems to me that given  
19 the scope of the class here, that I would be interested to get  
20 some cost estimates as to further outreach, whether it be in  
21 terms of an e-mail blast and/or perhaps some sort of press  
22 release or statement by settling plaintiffs, so that the word  
23 can get out there with regard to the new dates. But I think it  
24 may be advisable to provide some sort of notice in addition to  
25 the settlement website and having it on the court's website.



1 The court's website is fascinating, and it gets lots of hits,  
2 but I don't know whether -- I think it might be beneficial to  
3 try to augment that.

4 So if the parties can provide me with at least some  
5 suggestions and some broad cost estimates, that would be  
6 helpful as well. Okay? Hopefully given the technology it  
7 wouldn't be that expensive to send out an e-mail blast. And  
8 certainly I'm sure that Hagens Berman having a press release,  
9 that wouldn't incur that material cost at this point in time.

10 So I would like the parties to think about that, too,  
11 and include that as part of any sort of motion to change the  
12 dates. I do recognize overall, though, that if a modest  
13 extension means that more potential class members get notice of  
14 their rights, then it's certainly worthwhile and reasonable to  
15 do so. But given the size of this class, I just want to make  
16 sure that if there are changes to the schedule that we let the  
17 class members know. Okay.

18 So you are going to be filing the additional cost  
19 affidavit or submissions today with regard to notice. And when  
20 do you anticipate filing the motion to modify the schedule?

21 MS. SPELLMAN: I think we can get it on file early  
22 next week.

23 THE COURT: Okay. I think as Ms. Fegan suggested, the  
24 sooner the better.

25 MS. SPELLMAN: Yes, your Honor. And --

1 THE COURT: Go ahead.

2 MS. SPELLMAN: I think we are scheduled to be before  
3 your Honor on Tuesday?

4 THE COURT: Let's keep that date just because it's on  
5 the calendar. And if other people, other plaintiffs' counsel  
6 or people, want to get some information as to what's going on  
7 or where things are going, I think that would be a good time to  
8 do it. Hold on let me see.

9 It might be a short status, but I think that, again,  
10 because that date was set some time ago, I think it would be  
11 wise to keep that date and see where we are. Okay? All right  
12 thank you very much.

13 MS. SPELLMAN: Thank you.

14 MS. FEGAN: Thank you.

15 MR. KUROWSKI: Thank you, your Honor.

16 (Which were all the proceedings heard in this case.)

17 CERTIFICATE

18 I HEREBY CERTIFY that the foregoing is a true, correct  
19 and complete transcript of the proceedings had at the hearing  
20 of the aforementioned cause on the day and date hereof.

21

22 /s/Alexandra Roth

3/3/2017

23 \_\_\_\_\_  
24 Official Court Reporter  
25 U.S. District Court  
Northern District of Illinois  
Eastern Division

\_\_\_\_\_  
Date